

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

CLERK US DISTRICT COURT
NORTHERN DIST. OF TX
FILED

2013 MAY 28 AM 11:31

ISRAEL GARCIA JR., et al.,

Plaintiffs,

vs

JENKINS | BABB, LLP, et al.

Defendants.

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DEPUTY CLERK

Civil Action No. 3:11-CV-3171

**PLAINTIFFS' MOTION FOR LEAVE TO FILE SUR-REPLY TO DEFENDANTS' REPLY
TO PLAINTIFFS' OPPOSITION TO MOTION FOR SUMMARY JUDGMENT**

TO THE HONORABLE JUDGE OF THIS COURT:

COMES NOW Israel Garcia Jr. and Melissa R. Garcia (Plaintiffs), who respectfully request leave of the Court to file the attached sur-reply addressing new summary judgment evidence provided by the Defendants.

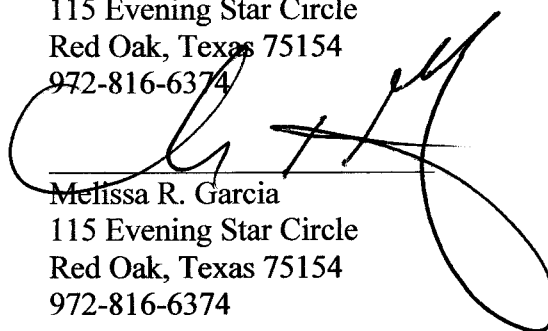
Plaintiffs' filing brings to the attention of the Court numerous errors within the affidavit of Marcia Hopkins offered in support of Defendants' motion for summary judgment. This is a new document brought forth in Defendants' response to Plaintiffs' opposition to their motion. "A sur-reply is appropriate by the non-movant only when the movant raises new legal theories or attempts to present new evidence at the reply stage." *Murray v. TXU Corp.*, 2005 U.S. Dist. LEXIS 10298, *13 (N.D. Tex. 2005); see also *Myers v. Ford Motor Credit Co.*, 2010 U.S. Dist. LEXIS 54517, *9 (N.D. Tex. 2010) (granting leave to file a sur-reply where movant raised new arguments for the first time in reply).

WHEREFORE, Plaintiffs respectfully request this Honorable Court enter an order granting leave to file Plaintiffs' short sur-reply annexed to this motion where the facts brought forth therein are material to the issues before this Court.

Respectfully submitted,



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Melissa R. Garcia
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Certificate of Conference

As required by LR 7.1(a) I certify that I have conferred, or made a reasonable attempt to confer with Defendants' council about the merits of this Motion with the following results: Defendants' council opposes this motion.

A handwritten signature in black ink, appearing to be "Israel Garcia, Jr.", written over a horizontal line.

Israel Garcia, Jr.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing document has been sent to the parties listed below by USPS First Class Mail.

Robert E Jenkins
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Dated May 28, 2013



Israel Garcia Jr.